

**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD**

(Special Original Jurisdiction)

-

-

WEDNESDAY, THE FIFTH DAY OF OCTOBER

TWO THOUSAND AND FIVE

P R E S E N T

THE HON'BLE SRI JUSTICE K . C . B H A N U

* * *

-

WP.No.21404 OF 2005

Between:

Md.Anwar Basha Petitioner

Versus

The Administrator,

A.S.Peta Mosque & Tomb Estate

Nellore District. Respondent

Counsel for the Petitioner : Mr.C.Damoder Reddy

Counsel for the Respondent: GOVT.PLEADER for APHC

ORDER :

This writ petition is filed seeking mandamus to declare the action of the respondent in not considering and passing any order on the application dated 11-7-2005 made by the petitioner in respect of appointment of managing trustee of Anumasamudrapet Mosque and Tomb Estate, Anumasamudrapet, Nellore district as bad and arbitrary on the ground that a Division Bench of the Hon'ble High Court of Madras in A.S. No. 200 of 1917 has directed the respondent to formulate a scheme to manage the said properties of the mosque and accordingly the respondent framed a scheme for appointment of trustee and also framed certain rules for such appointment and the same was accordingly approved by the Hon'ble Madras High Court.

The learned counsel for the petitioner seeks to contend that the earlier notification dated 26-6-2004 is still subsisting and therefore the petitioner's application dated 11-7-2005 may be considered and appropriate decision has to be taken by the respondent. In pursuance of the scheme, originally the respondent has been appointing trustee for managing Anumasamudrapet Mosque and Tomb Estate regularly. The petitioner herein was also elected as President of the Darga Welfare Committee in the year 1982 and since then he is rendering services to the said mosque through the welfare committee and all the members of the Darga Committee have been rendering service to the mosque voluntarily.

The learned counsel for the petitioner submits that the respondent has issued notification calling for the applications for appointment of the trustee of Anumasamudrapet Mosque and Tomb Estate and published the same in Eenadu Daily dated 26-6-2004 prescribing certain qualifications and the last date for receipt of application was being 17-7-2004. After issuance of notification, the members of the Darga Welfare Committee and Village elders and the pilgrims have requested him to submit his application for the appointment as trustee for rendering better services in managing the institution effectively. The petitioner accordingly submitted his application dated 29-6-2004 through registered post with acknowledgement due and the same was received by the respondent on 30-6-2004 within time.

The learned counsel appearing for the petitioner submits that contrary to the scheme formulated and approved by the Hon'ble Madras High Court, the respondent notified that the minimum qualification as degree and also English, in addition to Urdu and Telugu. On noticing the same, the village elders and some others, who are interested in the mosque affairs, have represented the same to the respondent that the said conditions are not prescribed in the scheme, and therefore, the conditions shall be deleted from the notification. The respondent has conducted interviews on 24-7-2004 and appointed one Mr.Pathan Faiz son of Masthan Khan as trustee, who gave his address as Dargamitta, Nellore but who actually belongs to Guntur district, as trustee of mosque and estate, vide orders in Dis.No.42, dated 27-7-2004 directing him to assume charge of the said post by furnishing security for Rs.20,000/- but he did not assume charge within time, and therefore, the respondent has cancelled the said selection by an order dated 03-8-2004. The respondent appointed one Mr.Mohd.Sayed Aqueel, as Trustee, Anumasamudrapet mosque and tomb estate, without conducting any interview and without verifying whether the aforesaid Sayed

Aqueel is a sunni or not. Questioning the order dated 10-9-2004, the petitioner filed WP.No.18802 of 2004 before this court and this court initially granted suspension of the said order and thereafter the respondent passed an order on 31-12-2004 appointing one Mr.Mohammed Abdullah Pasha as incharge of the said Darga and since then the said Mohd.Abdulla Pasha has been holding the charge of the said post. After hearing both sides, this court was pleased to dismiss WP.No.18802 of 2004 with an observation that in respect of disqualification and disputed questions, the petitioner can file an application before the respondent for proper enquiry and adjudication and for a just decision. The said order was affirmed in WA.No.423 of 2004 on 15-3-2005. In fact, as per the amended scheme formulated by the Hon'ble Madras High Court in the order dated 11-6-1940 passed in CMP.No.3196 of 1940, all the members of the Board shall be resident of Nellore district and the period of the Board of members shall be for a period of six years and the respondent has to appoint the Board of Trustees/members to manage the affairs of Anumasamudrapet mosque and tomb estate. The respondent is having knowledge about the disqualifications of the earlier appointed trustees, appointed the incharge trustee and continuing him to manage the said mosque and tomb estate and in spite of the application and several requests made by the petitioner, the respondent failed to consider his application dated 11-7-2005. Therefore, the petitioner's application dated 11-7-2005 has to be considered in pursuance of the notification dated 26-6-2004 and appropriate decision has to be taken by the respondent.

On instructions, it is brought to the notice of this court that prima facie, in view of the fact that for the present the respondent has not issued any notification calling for the applications to fill up the post of trustee to manage the A.S.Peta Mosque and Tomb Estate and fresh notification will be issued in due course of time, preferably in the next month. Therefore, the application of the petitioner cannot be considered without any notification, as it is against the scheme formulated by the respondent in OS.No.150 of 1913 under the directions of a Division Bench of the Madras High Court in AS.No.200 of 1917 and the rules made therein.

Further it is submitted that in the earlier round of litigation, the petitioner filed WP.No.18802 of 2004 questioning the appointment of second respondent therein and this court initially granted suspension of the appointment of second respondent therein and consequently he was removed and thereafter an order dated 31-12-2004 was passed by the respondent appointing one Mr.Mohd.Abdullah Pasha, as in-

charge of the said mosque and tomb and since then he has been holding the said post as incharge trustee.

Heard the learned counsel for the petitioner and the learned Govt.Pleader for the respondent.

The main grievance of the petitioner is that he has submitted an application dated 11-7-2005 to the respondent seeking appointment of managing trustee of Anumasamudrapet Mosque and Tomb Estate. But earlier when the respondent issued notification dated 26-6-2004 calling for the applications to fill-up the post of trustee of the said mosque and tomb estate and among the candidates applied for the said post, one Mr.Md.Sayed Aqueel was appointed as trustee by the respondent herein through an order dated 10-9-2004 and that order was challenged by the petitioner in WP.No.18802 of 2004 on the ground that the second respondent therein does not belong to the category of local candidate and is a resident of Hyderabad and more particularly he is not a sunni. This court by an order dated 01-3-2005 passed in WP.No.18802 of 2004 directed the petitioner to file an application as contemplated under Rule-19 of the Rules framed in OS.No.50 of 1913 on the ground that whether the second respondent therein appointed is a sunni or not. Since 31-12-2004, incharge trustee is managing the affairs of the mosque and tomb estate, the respondent has to take appropriate decision to issue fresh notification to fill up the post of trustee. The petitioner without availing the remedy as contemplated under Rule-19 of the Rules, filed the present writ petition seeking to consider his application dated 11-7-2005 on the ground that the earlier notification dated 26-6-2004 is still subsisting. I am not able to appreciate the contention raised by the learned counsel for the petitioner that the earlier notification is still subsisting. Since the respondent has not issued any notification to fill up the post of trustee, his application was rightly not considered, in fact, be that as it may, he is the President of Mosque Welfare Committee since 1982 he is voluntarily looking after the welfare of the devotees/pilgrims.

But the learned counsel for the petitioner submits that since the trustees appointed were unable to manage the affairs, as there were several complaints from the devotees/pilgrims and to attend to the welfare activities of the tomb estate has formed a Darga Welfare Committee bearing registration no.178 of 1981 and this Committee is looking after the welfare of the said Darga voluntarily. He further submitted that as the trustees appointed by the respondent were indulging in serious

irregularities and misappropriation of funds of the Darga, the Darga Welfare Committee brought the same to the notice of the respondent with clear evidence and after thorough enquiry the respondent has suspended those trustees, who were appointed from time to time and who are responsible for misappropriation of funds and commission of irregularities. Therefore, in view of the above circumstances, the respondent had issued proceedings directing the trustee to allow the petitioner, who is the President of the Darga Welfare Committee to put his seal on each of the receipts issued by the trust to the pilgrims and also on the Hundi and authorized the petitioner to check accounts and report to the respondent about the irregularities, if any.

After hearing the submission made by the learned counsel for the petitioner and also in view of the statement made by the learned Govt. Pleader for the respondent that fresh notification will be issued by the respondent for appointment of trustee in due course of time, without entering into the merits of the case, I do not wish to express any opinion, as the present writ petition is filed at the premature stage.

Without entering into the merits of the case, this writ petition can be disposed of directing the petitioner to submit his application and that the respondent shall issue notification for appointment of trustee of Anumasamudrapet Mosque and Tomb Estate forthwith and in such event the respondent shall consider the case of the petitioner along with other eligible candidates and consider him for the said post as trustee on merits and in accordance with law, vis-à-vis the amended scheme formulated in the order dated 11-6-1940 passed in CMP.No.3196 of 1940 by the Madras High Court, uninfluenced by any of the observations made by this court, either in this writ petition or any earlier litigation.

With the above observation, the writ petition is accordingly disposed of at the admission stage. No costs.

OCTOBER 05th, 2005. -----

Is L. **K.C. BHANU , J.**

